

**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

RECORDATION NO. 23289-C FILED

DEC 27 '00 3:17 PM

**SURFACE TRANSPORTATION BOARD**

lgitomer@bjllp.com

December 27, 2000

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423

RECORDS NEW-C

Dear Secretary Williams:

I have enclosed the original and one certified copy of the document described below, to be recorded pursuant to 49 U.S.C. § 11301.

The document is a Guaranty, a secondary document, dated as of December 21, 2000. We request that this document be given the "P" suffix of the Recordation Number assigned to the accompanying Lease Agreement. <sup>C</sup>

The name and address of the party to the Guaranty is:

Guarantor:

RailAmerica, Inc.  
5300 Broken Sound Boulevard, NW  
Boca Raton, FL 33487

A description of the equipment covered by the Guaranty consists of two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

BALL JANIK LLP

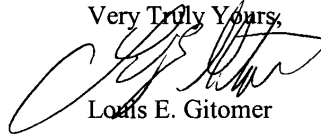
Honorable Vernon A. Williams  
December 27, 2000  
Page 2

A fee of \$26.00 is enclosed. Please return the original to:

Louis E. Gitomer  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005

A short summary of the document to appear in the index follows: Guaranty by RailAmerica, Inc., 5300 Broken Sound Boulevard, NW, Boca Raton, FL 33487, covering two GP-38 locomotives numbered TPW 3821 and 3878, one GP-40 locomotive numbered TPW 4020, four GP-40-2 locomotives numbered TPW 4052, 4053, 4054, and 4055, and one GP-40-X locomotive numbered TPW 4056.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over the typed name.

Louis E. Gitomer

Enclosures

DEC 27 '00

3-17 PM

Banc of America Leasing &amp; Capital, LLC

Guaranty of Corporation

SURFACE TRANSPORTATION BOARD

For Value Received and in consideration of any financial accommodations now or hereafter made to RailTex, Inc. ("Obligor"), which accommodations will be to the direct interest and advantage of the undersigned, an affiliate of Obligor, by Banc of America Leasing & Capital, LLC, and to induce Banc of America Leasing & Capital, LLC from time to time to make any such accommodations to Obligor and/or enter into any lease agreement with Obligor with regard to any such accommodations, the undersigned and Banc of America Leasing & Capital, LLC agree as follows:

I. **Character of Obligation.** The undersigned hereby unconditionally guarantees the full payment and performance by Obligor of all such financial accommodations, including all interest and other charges with respect thereto, under that certain Lease Agreement dated December 14, 2000 between Obligor and Banc of America Leasing & Capital, LLC, however and whenever incurred or evidenced, whether direct or indirect, absolute or contingent, or due or to become due (hereafter the "Obligations"). The obligation of the undersigned hereunder is primary and unconditional and shall be enforceable before, concurrently or after any claim or demand made or suit filed against Obligor or any other guarantor or surety, and before, concurrently or after any proceeding by Banc of America Leasing & Capital, LLC against any security, and shall be effective regardless of the solvency or insolvency of Obligor at any time, the extension or modification of the Obligations by operation of law, or the subsequent reorganization, merger or consolidation of Obligor, or any other change in its composition, nature, personnel or location. The obligation hereunder may be considered by Banc of America Leasing & Capital, LLC either as a guaranty or an agreement of surety. Payment of any sum or sums due to Banc of America Leasing & Capital, LLC hereunder will be made by the undersigned immediately upon demand by Banc of America Leasing & Capital, LLC. To the extent that Banc of America Leasing & Capital, LLC receives payment of the Obligations, which payment is thereafter set aside or required to be repaid in whole or in part, then, to the extent of any sum not finally retained by Banc of America Leasing & Capital, LLC, the obligation of the undersigned hereunder shall remain in full force and effect (or be reinstated). The undersigned agrees to pay all costs of Banc of America Leasing & Capital, LLC of collection of any sum or sums due hereunder, and, if collected by or through an attorney, fifteen percent (15%) of the principal and interest of the sum or sums due as attorneys' fees (but not in excess of actual fees incurred) together with all other legal and court expenses. The undersigned hereby transfers and conveys to Banc of America Leasing & Capital, LLC any and all of its balances, credits, deposits, accounts, items and monies now or hereafter in possession or control of, or otherwise with Banc of America Leasing & Capital, LLC, and Banc of America Leasing & Capital, LLC is hereby given a security interest upon and in all property of the undersigned of every kind and description now or hereafter in the possession or control of Banc of America Leasing & Capital, LLC for any reason, including all dividends and distributions or other rights in connection therewith.

II. **Consent and Waiver.** The undersigned waives notice of acceptance hereof, creation of any of the Obligations, or nonpayment or default by Obligor under any of the Obligations or any agreement now or hereafter existing between Obligor and Banc of America Leasing & Capital, LLC, presentment, demand, notice of dishonor, protest and any other notices whatever. The undersigned, without affecting its liability hereunder, consents to and waives notice of all changes of terms of the Obligations, the withdrawal or extension of credit or time to pay, the release of the whole or any part of the Obligations, renewal, indulgence, settlement, compromise or failure to exercise due diligence in collection, the acceptance or release of security, extension of the time to pay for any period or periods whether or not longer than the original period, or any surrender, substitution or release of any other person directly or indirectly liable for any of the Obligations or any collateral security given by Obligor. The undersigned waives the provisions of Section 10-7-24 of the Official Code of Georgia Annotated (or any similar of any other jurisdictions) relating to the undersigned's right to discharge upon the undersigned's giving notice to Banc of America Leasing & Capital, LLC to proceed against Obligor for collection after the Obligations are due and payable and the failure or refusal of Banc of America Leasing & Capital, LLC thereupon to commence an action or foreclose any collateral within any specified time period or at any time. The undersigned also consents to and waives notice of any arrangements or settlements made in or out of court in the event of receivership, liquidation, readjustment, any proceeding under Title 11 of the United States Code, as amended, or assignment for the benefit of creditors of Obligor, and anything whatever whether or not herein specified which may be done or waived by or between Banc of America Leasing & Capital, LLC and Obligor, or Obligor and any other person whose claim against Obligor has been or shall be assigned or transferred to Banc of America Leasing & Capital, LLC. The undersigned agrees that if any notification of intended disposition of collateral or of any other act by Banc of America Leasing & Capital, LLC is required by law and a specific time period is not stated therein, such notification, if mailed by first class mail at least five (5) days before such disposition or act, postage prepaid, addressed to the undersigned either at the address shown below or at any other address of the undersigned appearing on the records of Banc of America Leasing & Capital, LLC, shall be deemed reasonably and properly given. Banc of America Leasing & Capital, LLC may, without notice of any kind, sell, assign or transfer any or all of the Obligations and in such event each and every immediate and successive assignee, transferee or holder of any of the Obligations shall have the right to enforce this Guaranty, by suit or otherwise for the benefit of such assignee, transferee or holder, as fully as if such assignee, transferee or holder were herein by name specifically given such rights, powers and benefits; Banc of America Leasing & Capital, LLC shall have an unimpaired right prior and superior to that of any such assignee, transferee or holder to enforce this Guaranty for the benefit of Banc of America Leasing & Capital, LLC as to such of the Obligations as is not sold, assigned or transferred.

III. **Construction.** This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty. This Guaranty does not supersede any other guaranty or other agreement executed by the undersigned, or either of them, or any other guaranty, jointly or severally, in favor of Banc of America Leasing & Capital, LLC.

IV. **Benefit.** This Guaranty shall bind the undersigned, its successors and assigns, and the rights and privileges of Banc of America Leasing & Capital, LLC hereunder shall inure to the benefit of its successors and assigns, and this Guaranty shall be effective with

Guaranty for the benefit of Banc of America Leasing & Capital, LLC as to such of the Obligations as is not sold, assigned or transferred.

III. Construction. This Guaranty shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under applicable law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty. This Guaranty does not supersede any other guaranty or other agreement executed by the undersigned, or either of them, or any other guaranty, jointly or severally, in favor of Banc of America Leasing & Capital, LLC.

IV. Benefit. This Guaranty shall bind the undersigned, its successors and assigns, and the rights and privileges of Banc of America Leasing & Capital, LLC hereunder shall inure to the benefit of its successors and assigns, and this Guaranty shall be effective with respect to accommodations made by Banc of America Leasing & Capital, LLC's successors and assigns to Obligor.

In Witness Whereof, the undersigned caused this Guaranty to be executed and its seal to be affixed by its duly authorized officer this 21st day of December, 2000.

Attest/Witness.

By:

Printed Name:

Title:

RailAmerica, Inc.

By:

Printed Name:

Title:

#### Acceptance

The foregoing Guaranty is accepted in Atlanta, Georgia this 22nd day of December, 2000.

Banc of America Leasing & Capital, LLC

By:

Printed Name:

Title:

Notarial Acknowledgment:

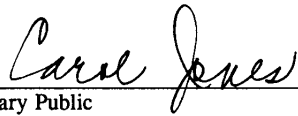
State of Georgia  
County of Dekalb ss.:

I hereby certify that on this 22nd day of December, 2000 before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Lauren S. Casey to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he duly executed same.

In Witness Whereof, I have hereunto set my hand and official seal as of the date hereof.

My Commission Expires \_\_\_\_\_, 20\_\_\_\_.

Notary Public, Dekalb County, Georgia  
(Official Seal) My Commission Expires February 17, 2003

  
\_\_\_\_\_  
Notary Public  
In and for said County and State

SECRETARY'S CERTIFICATE

I, the undersigned, Donald D. Redfearn, the duly elected, qualified and acting Secretary of RailAmerica, Inc. (the "Company") hereby certify that the Board of Directors of the Company at its regular schedule meeting held on June 22, 2000 unanimously adopted a resolution approving a series of transactions by corporations controlled by the Company, specifically including one or more locomotive sales and lease backs such as that with Banc of America Leasing and Capital, LLC. The officers of the Company were authorized to proceed with such transactions execute and deliver any agreements, instruments or other documents and to take such action as they deemed necessary or appropriate to carry out the purpose of the locomotive sales and lease backs and the taking of any such action shall be conclusive evidence that the same was authorized and ratified.

I further certify that the following are the names, titles and official signatures of the officers so authorized by the Board of Directors:

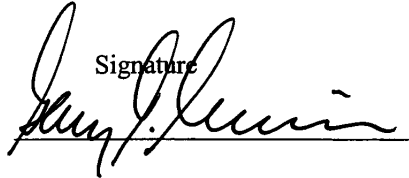
Name

Title

Signature

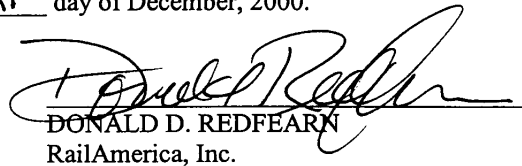
Gary O. Marino

President, Chairman and CEO



IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the Company and affixed the corporate seal of the Company this 21<sup>st</sup> day of December, 2000.

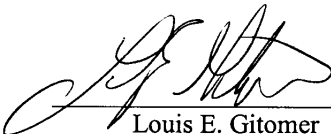
(Corporate Seal)



DONALD D. REDFEARN  
RailAmerica, Inc.

# CERTIFICATION

I, Louis E. Gitomer, have compared this copy to the original Guaranty dated as of December 21, 2000 and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.



---

Louis E. Gitomer  
December 27, 2000